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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

FREDDY J. ROBLEDO, Plaintiff and Respondent, v. RANDSTAD US, L.P., Defendant and Appellant.	H042483 (Monterey County Super. Ct. No. M130588)

Defendant Randstad US, L.P. seeks review of an order denying its motion to compel arbitration in an action brought by its employee, plaintiff Freddy J. Robledo. Defendant contends that plaintiff was bound by an employment agreement under which he would submit employment-related claims to arbitration and would not bring any claim on behalf of other individuals. We will affirm the order.

Background

Defendant is a Georgia corporation that offers human resources services, such as staffing, to its clients throughout the country, including California. From April 10 through May 31, 2014, plaintiff worked as a temporary employee for one of defendant's clients; then he was hired directly by the client as a permanent employee.

Each applicant for employment at defendant's Salinas branch was given an application packet, which included a two-page arbitration agreement. The agreement provided, in relevant part: "As consideration for accepting or continuing my employment with Randstad, Randstad and I agree to use binding arbitration, instead of going to court,

for any 'covered claims' that arise between me and Randstad . . . 'Covered claims' are any legal claims that relate to my recruitment, hire, employment, and/or termination including, but not limited to, those concerning wages or compensation, consumer reports, benefits, contracts, discrimination, harassment, retaliation, leaves of absence or accommodation for a disability. [¶] . . . *I also agree that covered claims will only* [*sic*] *be arbitrated on an individual basis*, and that both Randstad and I waive the right to participate in or receive money from any class, collective or representative proceeding. *I may not bring a claim on behalf of other individuals*, and any arbitrator hearing my claim may not combine more than one individual's claim or claims into a single case, or arbitrate any form of a class, collective, or representative proceeding. I understand and agree that any ruling by an arbitrator combining the covered claims of two or more employees or allowing class, collective or representative arbitration would be contrary to the intent of this agreement and would be subject to immediate judicial review. [¶] . . . [¶] I agree that this entire agreement is void if it is determined that I cannot waive the right to participate in or receive money from any class collective, or representative proceeding."

Plaintiff spoke both Spanish and English, but his ability to read and write in either language was limited, and his schooling ended at the ninth grade. When he was hired on April 9, 2014, he was given a large stack of papers and told he must sign them in order to be employed by defendant. He did not understand many of the documents, and no one explained any of them before he signed. In particular, he was unaware that he was signing an arbitration agreement, nor did he understand what an arbitration agreement was. No one explained the existence and nature of this agreement to him.

On January 7, 2015, plaintiff filed a complaint asserting a single cause of action under Labor Code section 2698, et seq., the "Private Attorneys General Act of 2004," often referred to as "PAGA." Plaintiff alleged that defendant had violated several provisions of the Labor Code by failing to provide plaintiff and other employees with

meal and rest periods, failing to pay overtime wages, failing to pay at least minimum wage, failing to provide accurate wage statements, failing to pay employees for all hours they worked, and failing to keep accurate personal and work records for each worker.

One week later, plaintiff was told to appear at the Salinas branch office to update his contact information, as a condition of further employment. When he arrived, he was directed to sign two more stacks of papers; again he was not informed, and he did not understand, that he was signing an arbitration agreement or that he was waiving "representative civil claims" against defendant.

On March 2, 2015, defendant moved to compel arbitration, invoking the provisions of both the initial arbitration agreement plaintiff had signed and the one on January 14, 2015. Defendant argued that the agreements were enforceable under the Federal Arbitration Act (FAA), which preempted any state authority holding otherwise. Although our Supreme Court had held otherwise in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), defendant maintained that *Iskanian* was wrongly decided and should not control.

On May 7, 2015, the trial court denied defendant's motion to compel arbitration with respect to the first agreement, reasoning that "clearly, under the current State Supreme Court's pronouncement [in *Iskanian*], it can't be enforced." The court declined to rule on the second agreement until the parties could obtain discovery regarding "Defendant's knowledge of plaintiff's claims at the time it requested Plaintiff to update his records and on the circumstances surrounding Plaintiff's execution of the second agreement."[1] Defendant filed this timely appeal from the order.

[1] The court's concern in delaying its ruling on the second agreement pending discovery was "really whether the employer knew that this claim was pending and slipped past counsel and got the employee to sign it. That is a tremendous concern to me."

Discussion

On appeal, defendant renews its contention that plaintiff was bound by the April 2014 arbitration agreement. It makes no difference, according to defendant, that the California Supreme Court has instructed otherwise. In *Iskanian*, our high court held that "where . . . an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law." (*Iskanian*, *supra*, 59 Cal.4th at p. 384.)

Defendant maintains, however, that *Iskanian* is preempted by the FAA. The Supreme Court addressed this very point in *Iskanian*, concluding that foreclosing PAGA waivers does not frustrate the objectives of the FAA. "Simply put, a PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*, which alleges directly or through its agents—either the Agency or aggrieved employees—that the employer has violated the Labor Code." (*Iskanian, supra*, 59 Cal.4th at pp. 386-387.)

Undaunted by this holding, defendant predicts that "it is likely that the FAA will be found to preempt *Iskanian*'s determination that PAGA waivers in arbitration agreements are contrary to public policy. . . . [C]lass action waivers in arbitration agreements, once contrary to state law, are *de rigeur* now; it is thus reasonable to conclude PAGA waivers soon will be, once the United States Supreme Court has occasion to consider and reject *Iskanian*'s conclusion that PAGA waivers are not preempted." Defendant cites several decisions by federal district courts that have rejected the *Iskanian* holding, ruling instead that the FAA preempts California's rule against PAGA waivers. (See, e.g., *Chico v. Hilton Worldwide, Inc.* (C.D. Cal. 2014) 2014 U.S. Dist. LEXIS 147752, at *31-34, and cases cited therein.) Defendant believes that "[t]his Court need not wait for the [United States Supreme Court] to consider whether *Iskanian* is preempted by the FAA to reverse the court's incorrect ruling

below . . . [G]iven California's record of historically incorrect FAA preemption decisions, this Court is not bound to uphold the court's denial of Defendant's motion to compel arbitration under *Iskanian*. The Supremacy Clause empowers this Court to conclude that the FAA preempts *Iskanian* without waiting for the high court to so pronounce."

We cannot so cavalierly disregard the authority of our Supreme Court as defendant urges us to do. Defendant barely acknowledges *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455, where our Supreme Court reaffirmed that "all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense. *The decisions of* [*the California Supreme Court*] *are binding upon and must be followed by all the state courts of California*." (*Ibid*., second italics added.)

Recognizing and respecting this firmly established principle, we reject defendant's suggestion that we contravene the authority of our Supreme Court by dismissing its decision in *Iskanian*.[2] We therefore adopt the reasoning and holding in that case and likewise conclude that "an agreement by employees to waive their right to bring a PAGA action serves to disable one of the primary mechanisms for enforcing the Labor Code. Because such an agreement has as its 'object . . . indirectly, to exempt [the employer] from responsibility for [its] own . . . violation of law,' it is against public policy and may not be enforced." (*Iskanian, supra*, 59 Cal.4th at p. 383.) Accordingly, the trial court correctly denied defendant's petition to compel plaintiff to arbitrate his representative PAGA claim.[3]

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[2] It is also noteworthy that the United States Supreme Court subsequently denied the petition for writ of certiorari in *Iskanian*. (*CLS Transportation Los Angeles, LLC v. Iskanian* (2015) 2015 U.S. LEXIS 735 [135 S.Ct. 1155].)

[3] In light of this conclusion, we need not address the parties' debate over whether the agreement was unconscionable.

Disposition

The order is affirmed. Plaintiff is entitled to his costs on appeal.

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ELIA, ACTING P.J.

WE CONCUR:

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BAMATTRE-MANOUKIAN, J.

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MIHARA, J.

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